

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

Case No. A-5646

PETITION OF JAMES AND JENNIFER VOORHEES

(Hearing held October 3, 2001)

OPINION OF THE BOARD

(Effective date of Opinion, November 2, 2001)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-1.323(b)(2). The petitioners propose to construct a one-story addition that requires an eight (8) foot variance as it is within seventeen (17) feet of the rear lot line. The required setback is twenty-five (25) feet.

The subject property is Lot 1, Block 6, White Flint Park Subdivision, located at 11219 Orleans Way, Kensington, Maryland, in the R-90 Zone (Tax Account No. 00090580).

Decision of the Board: Requested variance **granted**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose to construct a 19.4 x 10.8 foot one-story addition in the southern side yard.
2. Michael Belisle, the petitioners' architect, testified that the proposed construction would enclose of an existing carport and that the petitioners had requested and received a variance in 1998 to complete the same construction, but had been unable to complete the work at that time.
3. Mr. Belisle testified that the property is a shallow, trapezoidal shaped lot, with the lot's dimensions narrowest in the southeast section of the property. Mr. Belisle testified that other properties in the neighborhood are similarly shaped, but that the shape of the other properties do not impact the rear yards as severely as it does on the petitioners' property.
4. Mr. Belisle testified that no new construction could be built in the northern side yard because of an existing septic tank and drain field located in this area. See, Exhibit No. 10.
5. The petitioners testified that the design of the addition would have the same roof pitch as the residence and that the addition would be built mostly of glass as shown in Exhibit Nos. 6(a) and 6(c). The petitioners testified that they have spoken with their neighbors and that their neighbors have expressed no concerns regarding the variance request.

FINDINGS OF THE BOARD

Based on the petitioners' binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

- (a) *By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The property is shallow, trapezoidal shaped lot, with a septic tank and drain field located in the northern side yard. The Board finds that the exceptional shape and shallowness of the lot are conditions peculiar to the property and that the strict application of regulations would result in unusual practical difficulties to and an undue hardship upon the property owners.

- (b) *Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The Board finds that the variance requested for the construction of a one-story addition is the minimum reasonably necessary to overcome the unique conditions of the property.

- (c) *Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The proposed construction will continue the residential use of the property and the variance will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

- (d) *Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The record contains no testimony or correspondence in opposition to the variance request and the Board finds that the variance will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the requested variance of eight (8) feet from the required twenty-five (25) rear lot line setback for the construction of a one-story addition is granted subject to the following conditions:

1. The petitioners shall be bound by all of their testimony and exhibits of record, and the testimony of their witnesses, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 3 and 6(a) through 6(f).

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Louise L. Mayer, seconded by Allison Ishihara Fultz, with Angelo M. Caputo and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the foregoing Resolution. Board member Donna L. Barron was necessarily absent and did not participate in this Resolution.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing
Opinion was officially entered in the
Opinion Book of the County Board of
Appeals this 2nd day of November, 2001

Katherine Freeman
Executive Secretary to the Board

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve-month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.